

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL NO. 1:00CV32**

<b>H. DEAN ALLISON, <i>et al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>This document pertains to:</b>	)	
<b>MAX HEATH, and wife JESSIE</b>	)	
<b>HEATH,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER OF</u></b>
	)	<b><u>DISMISSAL</u></b>
<b>DANIEL CONSTRUCTION COMPANY,</b>	)	
<b>INC., <i>et al.</i>,</b>	)	
	)	
<b>Defendants.</b>	)	
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**THIS MATTER** is before the Court *sua sponte* to dismiss this action as to the Plaintiffs Max Heath, and wife Jessie Heath, for failure to prosecute.

On July 8, 2008, the Court permitted Plaintiff's counsel to withdraw. **See Order, filed July 8, 2008.** In her motion to withdraw, Plaintiff's counsel advised the Court that although four years had passed since the death of Max Heath, no estate has been opened appointing a personal representative to pursue this action and numerous contacts have been made by counsel to Mrs. Jessie L.

Heath, Plaintiff Max Heath's surviving spouse, at which time the necessity for establishing an estate and the consequences of not doing so were explained. **See Motion to Withdraw as Counsel of Record, filed June 16, 2008, ¶¶ 2, 3.** Plaintiff's counsel advised Mrs. Heath of the "consequences of failing to establish an estate" and she "indicated verbally that [those] consequences . . . were understood." *Id.* ¶ 3. No response to the motion to withdraw was received from Mrs. Heath and the Court allowed counsel's motion. **See Order, *supra*.**

In the same Order, the Court directed Mrs. Heath to take appropriate action to prosecute the claims filed herein and to do so within 30 days of entry of the Order. To date, no response, either *pro se* or through counsel, has been received from Mrs. Heath. Therefore, the Court finds that the Plaintiff, by the inaction of his surviving spouse, has abandoned his claims herein, failed to prosecute this action, and the claims should be summarily dismissed. **See Fed. R. Civ. P. 41(b) (providing that a dismissal for failure to prosecute "operates as an adjudication on the merits"); *Ballard v. Carlson*, 882 F.2d 93, 95 (4<sup>th</sup> Cir. 1989) (sanctioning dismissal**

**under Rule 41(b) for failure to respond to a specific directive of the Court).**

**IT IS, THEREFORE, ORDERED** that the claims of Max Heath and wife Jessie Heath against all Defendants herein are hereby **DISMISSED** in their entirety.

**IT IS FURTHER ORDERED** that the Clerk mail a copy of this Order of Dismissal to Mrs. Jessie L. Heath, at the address of Route #1, Box 252, Ft. Lawn, South Carolina, 29714.

Signed: August 20, 2008

A handwritten signature in dark ink, appearing to read 'Lacy H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

